



W.P.(MD)No.7644 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.7644 of 2020
and W.M.P(MD)No.7136 of 2020

A.Ignatius Xavier

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep by its Secretary,
Department of School Education,
Fort St.George,
Chennai – 600 009.

2.The Director of School Education,
College Road,
Chennai 600 006.

3. The Accountant General,
Office of the Accountant General,
261, Annasalai,
Chennai – 600 018

4. The Chief Educational Officer,
Nagercoil,
Kanyakumari District.



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5. The District Educational Officer,
Thuckalay,
Kanyakumari District.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents herein to reckon forthwith the petitioner's service as PG Assistant Botany in Good Shepherd Matriculation Higher Secondary School, Nagercoil from 01.06.1989 to 13.01.1999 for the purposes of pay fixation and pension in the light of G.O.Ms.No.413 School Education Department dated 27.11.2015.

For Petitioner	: M/s.S.Amala
For R3	: Mr.P.Gunasekaran
For R1,R2, R4 & R5	: Mr.J.Ashok
	Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Mandamus directing the respondents herein to reckon forthwith the petitioner's service as PG Assistant Botany in Good Shepherd Matriculation Higher Secondary School, Nagercoil from 01.06.1989 to 13.01.1999 for the purposes of pay fixation and pension in the light of G.O.Ms.No.413 School Education Department dated 27.11.2015.



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2. The case of the petitioner is that the petitioner was initially appointed as P.G Assistant in Good Shepherd Matriculation Higher Secondary School, Holy Cross College Road, Nagercoil in the regular sanctioned vacancy in Dr.Samuel Higher Secondary School, Santhapuram, Kanyakumari District. Subsequently, he rendered service from 01.06.1989 to 13.01.1999. Thereafter, again the petitioner was appointed as P.G Assistant on 02.06.1999 in the regular sanctioned vacancy in Dr.Samuel Higher Secondary School, Santhapuram, Kanyakumari District. The petitioner retired from service on 31.07.2019.

3.The grievance of the petitioner is that the petitioner's service rendered in Good Shepherd Matriculation Higher Secondary School, Holy Cross College Road, Nagercoil, was not considered and not accounted for the benefits in the regular service rendered in Dr.Samuel Higher Secondary School, Santhapuram, Kanyakumari District in terms of G.O.Ms.No.413 School Education Department dated 27.11.2015. Hence, the present Writ Petition has been filed with the abovesaid prayer.



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4. The learned Additional Government Pleader appearing for the respondents has filed a counter affidavit, in paragraph No.11 of the counter affidavit it has been held as follows:

11. We have considered the rival submissions. It is unfortunate that the decision in S.Devakadashams case, referred to supra, wherein the validity of G.O.Ms.No.314 dated 12.12.1999 was upheld, was not brought to the notice of the Division Bench which subsequently considered the very same issue in Gabriel Jelestins case. While the judgment of the Division Bench in S.Devakadashams Case, takes into account the impact of the Government Orders vis-a-vis the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, and the Rules made there under, the subsequent judgment of the Division Bench proceeds, on the basis of G.O.Ms.No.18 and G.O.Ms.No.143. We are constrained to point out that in a later judgment, a learned Single Judge of this Court in K.Pitchai v. The State of TamilNadu made in WP (MD) No.20326 of 2013 dated 28.02.2018, has after referring to the various Government Orders and found that the Government Order in G.O.Ms.No. 143, Education (D2) Department, dated 30.01.1987 does not exist at all and it is a fake Government Order. In view of the above said conclusion of the learned Single Judge and the fact



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that the decision of the subsequent Division Bench was rendered in ignorance of the earlier Division Bench, the dictum of the earlier Division Bench, which is more elaborate, is entitled to more credence than the decision of the subsequent Division Bench, the Honble Supreme Court in Sri Jagannath Temple Managing Committee v. Siddha Math and Others, reported in 2015 (16) SCC 542, has held that a subsequent decision of the Co-equal Bench rendered in ignorance of the earlier decision of the Division Bench cannot be said to be a binding precedent.

5. Heard both sides.

6. The core issue involved in the present case is whether the service put in by her in the unaided matriculation school to be counted for the purpose fixation of pension. The similar issue was considered by this Court in W.P.(MD).No.2849 of 2015 [Pattammal vs The Principal Accountant on 5 March, 2018]. In that case, the petitioner was employed as a Post Graduate Tamil teacher in an unaided matriculation school from 06.06.1984 to 22.11.1999. Subsequently, she got appointment in a Government school. She retired on reaching the age of superannuation on 30.04.2007. The petitioner

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wants the service put in by her in the unaided matriculation school to be counted for the purpose of pension. The said request was rejected by the impugned order dated 20.02.2013, in paragraph No.20 of the order is extracted hereunder:

20. As rightly contended by the learned Additional Government Pleader, the Division Bench, in its Judgment in W.A.Nos.291 and 292 of 2008, took into account G.O.Ms. No.143, which was a bogus one. Furthermore, the Judgment of the Division Bench in S.DEVAKADAKSHAM's case (cited supra) was not brought to the notice of the Division Bench which heard the writ appeals in W.A.Nos.291 and 292 of 2008. The Judgment S.DEVAKADAKSHAM's case (cited supra) disposed a batch of writ appeals and the Division Bench considered extensively the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act 1973 and has recorded a finding that the service rendered in a non-sanctioned post could not be counted for the purpose of pension and pay fixation. All the Teachers, who were granted benefit based on G.O.Ms.No.18, faced recovery proceedings, based on G.O.Ms.No.314, referred to above. The action based on G.O.Ms.No.314 was upheld by the Division Bench in its Judgment in S.DEVAKADAKSHAM's case (cited supra). However, two cases escaped from the net and writ appeals



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preferred by those two Teachers in W.A.Nos.291 and 292 of 2008 alone were allowed on the sole ground that they were discriminated in the matter of counting the service rendered in the non- sanctioned post, based on the benefit given to a teacher in terms of G.O.Ms.No.18.

7. Subsequently, the same was confirmed by the Division Bench of this Court in W.A(MD)No.1276 of 2014 and W.ANo.40 of 2015 [The Secretary To Government vs S.Veerabadran on 5 July, 2018], wherein it has been held in paragraph Nos.3 to 13 as follows:

3. The claim of the respondents in these Writ Petitions is that they are entitled to the benefits of G.O.Ms.No.18, Education Science and Technology (T.2) Department, dated 09.01.1997, passed in favour of one individual by name M.Jayaraj, for counting services rendered by them in Private Schools. They would also rely upon G.O.Ms.No.143 dated 30.01.1987, in and by which, it is claimed that services rendered by one Fr.Stanislaus in Don Bosco Matriculation School Panaji, Goa, from 01.06.1966 to 13.06.68 and Don Bosco Matriculation School, Madras, from 04.06.1973 to 23.05.1980 were included for the purpose of calculation of their pension and other benefits.



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4. The learned Single Judge, who decided the Writ Petition in WP No.26885 of 2013, followed the judgment in WP No.7627 of 2006 dated 01.04.2013. The judgment in WP No.7627 of 2006 is under challenge in Writ Appeal in WA No.1267 of 2014, while the judgment in WP No.26885 of 2013 is under challenge in WA No.40 of 2015. The moot question that arises, in both these Appeals, is as to whether the respondents in these Appeals would be entitled to inclusion of the services rendered by them in Private Unaided Schools for the purposes of calculation of their pension.

5. By G.O.Ms. No.314, School Education D2 Department, dated 12.12.1999, the Government had considered the inclusion of the services rendered by individual Teachers in unproved posts in recognised Schools. The Government had clarified that the services rendered in recognized Schools can be taken into account for the purposes of promotion. The said services, however, will not be counted for the purposes of fixation of salary and for grant of pensionary benefits. As a consequence of the said G.O., several orders of recovery were passed against the teachers. The recovery orders as well as the validity of G.O.Ms.No.314, were challenged in batch of Writ Petitions, before this Court. The Writ Petitions were dismissed by the learned Single Judge, however, with the direction to the Authorities to give opportunity to individuals for the purpose of quantifying the amount to be recovered from each other.



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6. The said order of the learned Single Judge was challenged in Writ Appeal Nos.648 of 2003 etc. batch ([S.Devakadasham v. District Educational Officer, Villupuram and others](#), reported in 2006 (4) MLJ 1580. A Division Bench of this Court after having considered the circumstances under which, the relevant Government Orders came to be issued upheld G.O.Ms.314 dated 12.12.1999. After elaborately considering the import of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act as well as the Constitutional Mandate for imparting Primary and Secondary Education, the Division Bench had observed as follows:

36. It is now well settled that the Government is obliged to sanction grant for payment of salary to a person appointed to a post, only if it is a sanctioned post. The posts held by the appellants got sanctioned by the Government only under G.O.Ms.Nos.340 and 341 dated 01.04.1992. Therefore, the appellants are not entitled to the benefit of counting past services rendered by them prior to the sanction of their posts.

(Emphasis added)

7. The contentions of the appellants in the said case relying upon the judgment of the Honble Supreme Court in [State of Rajasthan v. Senior Higher Secondary School, Lachhmangarh](#), reported in AIR 2005 SC 3541, were also rejected by the Division Bench holding that the teachers in Private Schools deserved to be treated on par with the Teachers of the Government Institution



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only to the extent possible. Pointing out the observations of the Honble Supreme Court to the effect that the provisions of the Act should be liberally interpreted in favour of the teaching class except where the statute may compel otherwise, the Division Bench came to the conclusion that the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, and the Rules framed under make the case on hand fall under the above qualifying statement of the Honble Supreme Court.

8. We have heard Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants, Mr.R.Saseetharan learned counsel appearing for the respondent in WA No. 1267/2014 and Ms.S.Harsini, learned counsel appearing for M/s.Rohini Ravikumar for the respondent in WA No.40/2015.

9. Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants would rely upon the above Division Bench Judgment of this Court and contend that inasmuch as G.O.Ms. 314 has been upheld by the Division Bench, there is no question of extending the benefits of G.O.Ms.No.18 dated 09.01.1997 to the respondents in these appeals.

10. Per contra, Mr.R.Saseetharan, learned counsel appearing for the respondents in Writ Appeal No.1267 of 2014 would contend that the benefit of the inclusion of the service in recognized Schools should also be taken into account relying upon the Government Order in G.O.Ms.37 dated 05.01.1983, a copy of the said Government Order is also placed before us by the



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learned counsel. From the said Government Order, we are unable to gather conferment of any such benefit to the teachers in question. He would also invite our attention to the judgment of another Division Bench of this Court in Gabriel Jelestin and P.George Vincent v. Government of Tamil Nadu, rendered in Writ Appeal (MD) Nos.291 and 292 of 2008 dated 26.06.2008. Drawing our attention to the fact that the Division Bench in Gabriel Jelestin's case had in fact struck down G.O.Ms.No.314 and directed conferment of the benefits of G.O.Ms.No.18 dated 09.01.1997 and G.O.Ms.No.143 dated 30.01.1987 on the appellants therein. Mr.R.Saseetharan would contend that there is an apparent conflict between the two Division Bench judgments of this Court.

11. We have considered the rival submissions. It is unfortunate that the decision in S.Devakadashams case, referred to supra, wherein the validity of G.O.Ms.No.314 dated 12.12.1999 was upheld, was not brought to the notice of the Division Bench which subsequently considered the very same issue in Gabriel Jelestins case. While the judgment of the Division Bench in S.Devakadashams Case, takes into account the impact of the Government Orders vis-a-vis the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, and the Rules made there under, the subsequent judgment of the Division Bench proceeds, on the basis of G.O.Ms.No.18 and G.O.Ms.No. 143. We are constrained to point out that in a later judgment, a learned Single Judge of this Court in [K.Pitchai v. The State of](#)



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[TamilNadu](#) made in WP (MD) No.20326 of 2013 dated 28.02.2018, has after referring to the various Government Orders and found that the Government Order in G.O.Ms.No.143, Education (D2) Department, dated 30.01.1987 does not exist at all and it is a fake Government Order. In view of the above said conclusion of the learned Single Judge and the fact that the decision of the subsequent Division Bench was rendered in ignorance of the earlier Division Bench, the dictum of the earlier Division Bench, which is more elaborate, is entitled to more credence than the decision of the subsequent Division Bench, the Honble Supreme Court in [Sri Jagannath Temple Managing Committee v. Siddha Math and Others](#), reported in 2015 (16) SCC 542, has held that a subsequent decision of the Co-equal Bench rendered in ignorance of the earlier decision of the Division Bench cannot be said to be a binding precedent.

12. A learned Single Judge (Honble Mr.Justice M.Srinivasan), as he then was, of this Court in [The Special Tahsildar No.III v. Rangasamy Reddiar](#), reported in 1988 (1) MLJ 317, had after referring to the judgment of the Full Bench of Patna High Court reported in AIR 1897 Patna 191, had held that when there are conflicting judgments of Co-equal Benches, it is open to the subsequent Bench to follow the decision which states the law more elaborately and accurately. Thus, looked at from any angle, the judgment of the Division Bench in Gabriel Jelestins case, rendered in ignorance of the earlier Division Bench Judgment in S.Devakadashams case, cannot be treated as a binding president.



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Further, the judgment of the Division Bench in Gabriel Jelestins case has taken note of the Government Orders in G.O.Ms.No. 143, which has been held to be a fake Government order by this Court in WP (MD) No.20326 of 2013.

13. In view of the above, we are constrained to follow the judgment of the Division Bench in S.Devakadashams Case, Reported in 2006 (4) MLJ 1580. in view of the categorical pronouncement of the Division Bench in S.Devakadashams Case, with which we agree, we are of the considered opinion that the judgments impugned in these Appeals viz., the judgment in WP No.26885 of 2013 and judgment in WP No.7627 of 2006 directing conferment of the benefits on the respondents in these Writ Appeals deserve to be set aside and they are accordingly set aside. The Writ Appeals stand allowed and both the Writ Petitions will stand dismissed”.

7. In view of the above judgments, this Court finds no merits in this Writ Petition and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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M.DHANDAPANI,J.

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